

1 HOUSE BILL NO. 619

2 INTRODUCED BY MAEDJE, BERGREN, BOOKOUT-REINICKE, BRUEGGEMAN, CURTISS, FUCHS,
3 HAINES, JACKSON, LAKE, LAMBERT, LANGE, B. OLSON, PATTISON, PETERSON, RICE, RIPLEY,
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6 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN EMPLOYER WHO IS ENGAGED IN THE
7 LOGGING INDUSTRY AND WHO EMPLOYS WORKERS FROM ANOTHER STATE TO OBTAIN WORKERS'
8 COMPENSATION COVERAGE IN MONTANA FOR THOSE WORKERS; DEFINING "LOGGING INDUSTRY";
9 AMENDING SECTIONS 39-71-116 AND 39-71-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
10 DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 39-71-116, MCA, is amended to read:

15 **"39-71-116. Definitions.** Unless the context otherwise requires, in this chapter, the following definitions
16 apply:

17 (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker
18 reaches maximum healing are less than the actual wages the worker received at the time of the injury.

19 (2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act
20 and the Occupational Disease Act of Montana necessary to:

21 (a) investigation, review, and settlement of claims;

22 (b) payment of benefits;

23 (c) setting of reserves;

24 (d) furnishing of services and facilities; and

25 (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

26 (3) "Aid or sustenance" means a public or private subsidy made to provide a means of support,
27 maintenance, or subsistence for the recipient.

28 (4) "Average weekly wage" means the mean weekly earnings of all employees under covered
29 employment, as defined and established annually by the department. It is established at the nearest whole dollar
30 number and must be adopted by the department before July 1 of each year.

- 1 (5) "Beneficiary" means:
- 2 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;
- 3 (b) an unmarried child under 18 years of age;
- 4 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is
- 5 enrolled in an accredited apprenticeship program;
- 6 (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the
- 7 decedent for support at the time of injury;
- 8 (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time
- 9 of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and
- 10 (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the
- 11 decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as
- 12 defined in subsections (5)(a) through (5)(e), does not exist.
- 13 (6) "Business partner" means the community, governmental entity, or business organization that
- 14 provides the premises for work-based learning activities for students.
- 15 (7) "Casual employment" means employment not in the usual course of the trade, business, profession,
- 16 or occupation of the employer.
- 17 (8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the
- 18 injury.
- 19 (9) "Construction industry" means the major group of general contractors and operative builders, heavy
- 20 construction (other than building construction) contractors, and special trade contractors, listed in major group
- 21 23 in the North American Industry Classification System Manual. The term does not include office workers,
- 22 design professionals, salespersons, estimators, or any other related employment that is not directly involved on
- 23 a regular basis in the provision of physical labor at a construction or renovation site.
- 24 (10) "Days" means calendar days, unless otherwise specified.
- 25 (11) "Department" means the department of labor and industry.
- 26 (12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.
- 27 (13) "Household or domestic employment" means employment of persons other than members of the
- 28 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
- 29 family, including but not limited to housecleaning and yard work, but does not include employment beyond the
- 30 scope of normal household or domestic duties, such as home health care or domiciliary care.

1 (14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
2 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

3 (15) "Invalid" means one who is physically or mentally incapacitated.

4 (16) "Limited liability company" is as defined in 35-8-102.

5 (17) "Logging industry" means logging as listed in major group 11, subsector 113310 of the North
6 American Industry Classification System Manual, EXCEPT THE TERM DOES NOT INCLUDE THE TRANSPORTATION OF
7 LOGS OR WOOD CHIPS.

8 ~~(17)~~(18) "Maintenance care" means treatment designed to provide the optimum state of health while
9 minimizing recurrence of the clinical status.

10 ~~(18)~~(19) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the
11 healing process when further material improvement would not be reasonably expected from primary medical
12 treatment.

13 ~~(19)~~(20) "Objective medical findings" means medical evidence, including range of motion, atrophy,
14 muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

15 ~~(20)~~(21) "Order" means any decision, rule, direction, requirement, or standard of the department or any
16 other determination arrived at or decision made by the department.

17 ~~(21)~~(22) "Palliative care" means treatment designed to reduce or ease symptoms without curing the
18 underlying cause of the symptoms.

19 ~~(22)~~(23) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual
20 payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any
21 length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an
22 estimate may be made by the department for any employer starting in business if average payrolls are not
23 available. This estimate must be adjusted by additional payment by the employer or refund by the department,
24 as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by
25 calculating all wages, as defined in 39-71-123, that are paid by an employer.

26 ~~(23)~~(24) "Permanent partial disability" means a physical condition in which a worker, after reaching
27 maximum medical healing:

28 (a) has a permanent impairment established by objective medical findings;

29 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability
30 to work; and

1 (c) has an actual wage loss as a result of the injury.

2 ~~(24)~~(25) "Permanent total disability" means a physical condition resulting from injury as defined in this
3 chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable
4 prospect of physically performing regular employment. Regular employment means work on a recurring basis
5 performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate
6 job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

7 ~~(25)~~(26) The "plant of the employer" includes the place of business of a third person while the employer
8 has access to or control over the place of business for the purpose of carrying on the employer's usual trade,
9 business, or occupation.

10 ~~(26)~~(27) "Primary medical services" means treatment prescribed by a treating physician, for conditions
11 resulting from the injury, necessary for achieving medical stability.

12 ~~(27)~~(28) "Public corporation" means the state or a county, municipal corporation, school district, city, city
13 under a commission form of government or special charter, town, or village.

14 ~~(28)~~(29) "Reasonably safe place to work" means that the place of employment has been made as free
15 from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

16 ~~(29)~~(30) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and that
17 are reasonably safe for use for the particular purpose for which they are furnished.

18 ~~(30)~~(31) (a) "Secondary medical services" means those medical services or appliances that are
19 considered not medically necessary for medical stability. The services and appliances include but are not limited
20 to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to
21 address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or
22 rehabilitation facilities.

23 (b) (i) As used in this subsection ~~(30)~~ (31), "disability" means a condition in which a worker's ability to
24 engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The
25 restrictions may be combined with factors, such as the worker's age, education, work history, and other factors
26 that affect the worker's ability to engage in gainful employment.

27 (ii) Disability does not mean a purely medical condition.

28 ~~(31)~~(32) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of
29 a business enterprise.

30 ~~(32)~~(33) "Temporary partial disability" means a physical condition resulting from an injury, as defined

1 in 39-71-119, in which a worker, prior to maximum healing:

2 (a) is temporarily unable to return to the position held at the time of injury because of a medically
3 determined physical restriction;

4 (b) returns to work in a modified or alternative employment; and

5 (c) suffers a partial wage loss.

6 ~~(33)~~(34) "Temporary service contractor" means a person, firm, association, partnership, limited liability
7 company, or corporation conducting business that hires its own employees and assigns them to clients to fill a
8 work assignment with a finite ending date to support or supplement the client's workforce in situations resulting
9 from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

10 ~~(34)~~(35) "Temporary total disability" means a physical condition resulting from an injury, as defined in
11 this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical
12 healing.

13 ~~(35)~~(36) "Temporary worker" means a worker whose services are furnished to another on a part-time
14 or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in
15 situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and
16 projects.

17 ~~(36)~~(37) "Treating physician" means a person who is primarily responsible for the treatment of a worker's
18 compensable injury and is:

19 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges
20 to practice in one or more hospitals, if any, in the area where the physician is located;

21 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

22 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there
23 is not a treating physician, as provided for in subsection ~~(36)(a)~~ (37)(a), in the area where the physician
24 assistant-certified is located;

25 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5;

26 (e) a dentist licensed by the state of Montana under Title 37, chapter 4;

27 (f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in
28 subsections ~~(36)(a)~~ (37)(a) through ~~(36)(e)~~ (37)(e) who is licensed or certified in another state; or

29 (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8,
30 recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in

1 consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided
 2 for in subsection ~~(36)(a)~~ (37)(a), in the area in which the advanced practice registered nurse is located.

3 ~~(37)~~(38) "Work-based learning activities" means job training and work experience conducted on the
 4 premises of a business partner as a component of school-based learning activities authorized by an elementary,
 5 secondary, or postsecondary educational institution.

6 ~~(38)~~(39) "Year", unless otherwise specified, means calendar year."
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8 **Section 2.** Section 39-71-402, MCA, is amended to read:

9 **"39-71-402. Extraterritorial application and reciprocity -- exception.** (1) If a worker employed in this
 10 state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment
 11 and receives an injury arising out of and in the course of employment, the provisions of this chapter apply to the
 12 worker as though the worker were injured within this state.

13 (2) Except as provided in subsection (5), if a worker from another state and the worker's employer from
 14 another state are temporarily engaged in work within this state, this chapter does not apply to them:

15 (a) if the employer and employee are bound by the provisions of the workers' compensation law or
 16 similar law of the other state that applies to them while they are in the state of Montana; and

17 (b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive
 18 remedy for workers employed in this state who are injured while temporarily employed in the other state.

19 (3) A certificate from an authorized officer of the workers' compensation department or similar agency
 20 of another state certifying that an employer of the other state is bound by the Workers' Compensation Act of the
 21 state and that its act will be applied to employees of the employer while in the state of Montana is prima facie
 22 evidence of the application of the workers' compensation law of the certifying state.

23 (4) The department may, with the approval of the governor, enter into agreements with workers'
 24 compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the
 25 provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the
 26 agreeing states.

27 (5) (A) Employers from another state ~~that who~~ are engaged in the construction industry ~~or the logging~~
 28 ~~industry, as defined in 39-71-116,~~ and ~~that who~~ employ workers from another state shall obtain coverage for
 29 those workers under the provisions of this chapter.

30 (B) EMPLOYERS FROM ANOTHER STATE WHO ARE ENGAGED IN THE LOGGING INDUSTRY AND WHO EMPLOY

1 WORKERS FROM ANOTHER STATE WHO WORK IN THIS STATE FOR MORE THAN 30 DAYS IN ANY CALENDAR YEAR SHALL
2 OBTAIN COVERAGE FOR THOSE WORKERS UNDER THE PROVISIONS OF THIS CHAPTER."

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4 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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